

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 28 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0292-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
RALPH FRANKLIN BENNETT, JR.,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
	)	

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20043765

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

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Robert J. Hooker, Pima County Public Defender  
By Frank P. Leto

Tucson  
Attorneys for Petitioner

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P E L A N D E R, Chief Judge.

¶1 In January 2005, petitioner Ralph Bennett was convicted after pleading guilty to attempted sale of a narcotic drug. The trial court suspended the imposition of sentence and placed Bennett on probation for three years. Eight months later, the state filed a petition to revoke Bennett's probation, alleging he had failed to report to the Pima County

Adult Probation Department for three consecutive months, had changed his residence without informing or seeking the approval of his probation officer, and had failed to pay court-ordered assessments as directed. Bennett admitted he had violated his probation conditions by failing to report, and the court revoked his probation and sentenced him to a presumptive term of 3.5 years' imprisonment.

¶2 Bennett then filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. In his subsequent petition, Bennett maintained the trial court abused its discretion in sentencing him to the presumptive term, arguing the court had failed to “properly weigh [the] mitigating circumstances,” including his “long history of [drug] addiction” and his “motivat[ion] to change.” He also argued that “the community was not endangered” by his offense because it involved an attempted sale of narcotic drugs to an undercover agent. The trial court denied relief, concluding the disposition hearing transcript established that the court “had considered the mitigating circumstances presented to it, but nevertheless found a *lack* of motivation to change existed in defendant’s case, and imposed the presumptive sentence.”

¶3 In his petition for review, Bennett reprises the same arguments he made to the trial court, adding only his suggestion that the probation revocation and sentence “amount to punishment for his status” as an addict, citing *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417 (1962). We do not consider issues first presented in a petition for review that “have obviously never been presented to the trial court for its consideration.” *State v.*

*Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see generally* Ariz. R. Crim. P. 32.9. In any event, Bennett’s reliance on *Robinson* is without merit. Although *Robinson* prohibited imposing punishment based solely on a defendant’s status as an addict, 370 U.S. at 666-67, 82 S. Ct. at 1420-21, it did not require that every addict receive a mitigated sentence. *See State v. Herro*, 120 Ariz. 604, 607, 587 P.2d 1181, 1184 (1978) (upholding sentence of imprisonment imposed after addict’s probation for narcotic drug offense was revoked and distinguishing *Robinson*); *see also State v. De la Garza*, 138 Ariz. 408, 409, 675 P.2d 295, 296 (App. 1983) (maximum sentence not excessive because heroin addict offender had “not completed any of the various rehabilitation programs in which he ha[d] participated and ha[d] gone back to his addiction”), *disapproved on other grounds by State v. Thurlow*, 148 Ariz. 16, 19, 712 P.2d 929, 932 (1986).

¶4 We review a trial court’s ruling on a petition for post-conviction relief only for an abuse of the court’s discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Similarly, “we will not disturb a sentence that is within statutory limits . . . unless it clearly appears that the court abused its discretion.” *State v. Cazares*, 205 Ariz. 425, ¶6, 72 P.3d 355, 357 (App. 2003). An abuse of sentencing discretion is “characterized by capriciousness or arbitrariness or by a failure to conduct an adequate investigation into the facts.” *State v. Patton*, 120 Ariz. 386, 388, 586 P.2d 635, 637 (1978).

¶5 In this case, we find no abuse of discretion in the trial court’s imposition of sentence or its denial of post-conviction relief. And the trial court denied relief in a minute

entry that clearly identified Bennett's arguments and correctly ruled on them in a manner that allows this court and any court in the future to understand their resolution. We need not repeat the court's reasoning here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although we grant review, relief is denied.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge